

**REMARKS**

1. Claim 1 is rejected under 35 U.S.C. 103(a) as being anticipated by Monteiro (US 4,555,108) and Ulrich (US 5,690,582). The Applicant respectfully traverses the rejection for the reasons discussed below.

**Independent claim 1** as amended recites a counterweight device is coupled to the footplates for keeping the footplates in a horizontal orientation.

**Monteiro** discloses a plurality of step members 30, mounted around a structural member 20, where each step member 30 is defined as a triangular configuration (col. 2, lines 55-59). Step member 30 is fixed and incapable of staying in the horizontal orientation which is important for foot pedaling in a upright posture.

**Ulrich** discloses a cycling pedal 27 (col. 6, line 37) which is used in its recumbent-bicycling embodiment. The pedal is not described and therefore is conventional. Being conventional, it is not coupled to any orientation-keeping device, and is incapable of staying in horizontal orientation. This embodiment of Ulrich is not relevant to the present claims, and is unrelated to Monteiro's upright climber.

Fig. 14A shows Ulrich's upright embodiment. This figure appears to show two arms coupled the pedal 254, implying that the pedal is maintained horizontal by means of a linkage. Thus, Ulrich appears to teach the same object as the Applicant, but a different means of reaching that object. Thus, Ulrich teaches away from the instant claims.

**Combination** is respectfully traversed. Ulrich discloses an input device and a processing unit disposed panel control operation modes according to rotational speed, while Monteiro discloses an hydraulic system with a manual control 44 for controlling the difficulty. The object of Monteiro is to allow the user to control the difficulty (col. 1, lines 41-50) while the object of Ulrich is to keep the user from getting bored (col. 1, line 66 to col. 2, line 5). Ulrich also allows for varied difficulty (col. 2, line 31) but this is not an object. Monteiro is not concerned with user boredom.

With respect, if the person of ordinary skill were to have applied the teachings of Ulrich to Monteiro (no motivation for doing so is seen or acknowledged), he or she would have applied only that portion of Ulrich relevant to the object of Monteiro, namely, that portion relating to variable difficulty. But there would have been no point to such a substitution, because the difficulty control of Monteiro is simpler than that of Ulrich.

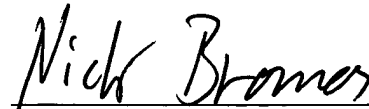
According to MPEP §706.02(j), the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. With respect, the examiner has not established a prima facie case of obviousness. For at least this reason, claim 1 patently defines over the applied art.

**Independent claim 7** now recites the feature also recited in claim 1, a counterweight device coupled to the footplates for keeping the footplates in a horizontal orientation.

**Independent claim 12** also recites an exercise device comprising a wheel type treadmill and a counterweight device, and a plurality of footplates disposed on a wheel, wherein the counterweight device is coupled to the footplates for keeping the footplates in a horizontal orientation. The rejection of claim 12 is traversed on the same grounds set out above.

**Claims 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16, 17, and 18** are also rejected under 35 U.S.C. 103 (a) as being unpatentable over Monteiro in view of Ulrich. Since all the limitations of Claim 1, 7, and 12 are not disclosed by Monteiro and Ulrich, dependent claims 2-6, 8-11, and 13-18 patently define over the cited art for at least the same reason.

Respectfully submitted,



Nick Bromer (Reg. No. 33,478)

(717) 426-1664

RABIN & BERDO, P.C.

CUSTOMER NO. 23995

Telephone: (202) 371-8976

Telefax : (202) 408-0924

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